

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 6267 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed
to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy
of the judgment ?
- 4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?
- 5 Whether it is to be circulated to the civil judge
?

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GABAJI R/O MEHSANA - Petitioner(s)
Versus
UNION OF INDIA & 3 - Respondent(s)

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Appearance :

PS GOGIA for Petitioner(s) : 1,
MS MEGHA JANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

In this petition, the petitioner an erstwhile employee of the Western Railway has challenged the legality of the judgment dated 12th May 2003 passed by the Central Administrative Tribunal, Ahmedabad in Original Application No.413/99.

2. Shortly stated, facts leading to this petition are that the petitioner was working as a Trolleyman in Railways. For alleged unauthorized absence, a chargesheet came to be issued against him on 21.6.90. In the said chargesheet, it was alleged that the petitioner had remained unauthorizedly absent from 23rd October, 1989 continuously till the issuance of the chargesheet. The petitioner filed no reply to the said chargesheet. He, however, contended that he had lost the chargesheet and that he may be supplied another copy thereof. During the proceedings of the inquiry also, the petitioner did not participate. Eventually, the authorities proceeded ex parte against the petitioner. Ultimately, the Disciplinary Authority passed order dated 1.11.1991 imposing penalty of removing the petitioner from service.

It appears that though the said order was passed on 1.11.91, the petitioner took no steps to challenge the same either before the appellate authority or before any court of law. Much

thereafter, in the year 1996 the petitioner moved Original Application No.776/96 before the Central Administrative Tribunal, Ahmedabad. This application came to be disposed of by order dated 8.7.97. The Tribunal found that the petitioner had not filed appeal against the order of removal. He was, therefore, permitted to pursue such remedy. To complete the narration of events, it may also be noted that the petitioner accordingly appealed before the appellate authority. His appeal also, however, came to be dismissed by order dated 3.10.97. The petitioner once again approached the Central Administrative Tribunal by filing Original Application No.728/97. This application also came to be disposed of by order dated 11.8.98 permitting the petitioner to approach the revisional authority against the penal orders. His revision having been dismissed, the petitioner approached the Central Administrative Tribunal by filing O.A. No.413/99 which came to be dismissed by the impugned judgment dated 12.5.2003.

3. Before the Tribunal, the petitioner had primarily contended that though he requested for a copy of the chargesheet, the same was never supplied to him and that subsequently also he was not properly served with the copy of the Inquiry Officer's report. In essence, therefore, the grievance of the petitioner was that the respondents had violated the principles of natural justice in conducting the inquiry.

The petitioner had also contended that he was unwell during the period of his absence which prevented him from joining the duties and that therefore his absence should be condoned.

The Tribunal, however, taking note of the events which took place during the course of inquiry found that at all stages, the department had given ample opportunities to the petitioner to participate in the inquiry. The Tribunal on the basis of the original files of inquiry came to the following factual conclusions:

“6. A perusal of the DAR case file of the applicant reveals the following position with regard to services of notices and other matters.

1. The chargesheet dtd. 11/09/1990 was received by the applicant vide his acknowledgment to the registered letter sent at his home address.

II. Enquiry officer's (hereinafter called E0) letter dtd. 06/11/1990 regarding nomination of defence counsel and next date being 23/11/1990 was received by the applicant on 22/11/1990.

III. E0's letter 12/12/1990 regarding nomination of defence counsel and for appearing at enquiry fixed on 23/12/1990 could not be served on account of unauthorized absence from headquarters.

IV. E0's letter dtd. 23/02/1991 for nominating defence assistant and appearing on 14/03/1991 was served to the applicant on 23/02/1991.

V. E0's letter dated 15/04/1991 asking the applicant to see the documents and nominate

defence assistant and to appear for enquiry fixed on 30/04/1991 was served on 22/04/1991.

VI. E0's letter dtd. 5/6/1991 and 10/08/1991 fixing enquiries on 22/06/1991 and 21/08/1991 has been affixed at his residence in presence of two witnesses.

VII. Disciplinary Authority's letter dtd. 28/08/1991 enclosing E0's report and asking for representation was sent at his home address and acknowledgment received.

VIII. The Disciplinary authorities' order sent to applicant's home address has been returned unserved."

With respect to the defence of the petitioner that it was his illness which prevented him from reporting for duty, the Tribunal found that there is no evidence produced by the petitioner to substantiate such a case. Considering these aspects of the matter, the Tribunal was of the view that the petitioner has not made out any case and the Original Application was, therefore, dismissed.

4. Before us, the petitioner has challenged the order passed by the Tribunal contending that though the petitioner had requested for supply of a copy of the chargesheet, the same was never supplied to him. It is also contended that on account of non-supply of copy of chargesheet, the petitioner could not reply properly and that the inquiry was conducted in violation of principles of natural justice.

5. Quite apart from the findings arrived at by the Tribunal which we have reproduced herein-above, we find that the petitioner has not made out any case for interference. From the above portion of the judgment of the Tribunal, it can be seen that at all stages, the department had given ample opportunities to the petitioner to participate in the inquiry. It is not even the case of the petitioner that he was not served with the chargesheet at the outset. It is, however, the case of the petitioner that he lost the copy of chargesheet and therefore he required another copy thereof. The department advised him to collect such a copy, but he did not turn out to do so. Surely, the department cannot be blamed for the petitioner having lost the copy of the chargesheet and thereafter not having taken any trouble even to collect a copy though offered. Additionally, we also find that the petitioner had at no stage given any satisfactory explanation for his long absence from duty from 23.10.89 to 21.6.90 i.e. date of charge-sheet which absence was totally unauthorized. As noted earlier, though the petitioner did try to suggest before the Tribunal that it was his illness which kept him away from duty, however, no material was placed on record to substantiate this assertion.

6. Quite apart from this, the conduct of the petitioner also would disentitle him from claiming any relief. Even before the chargesheet in question was issued and departmental proceedings conducted against the petitioner, he had remained absent

unauthorizedly. It may also be noted that the order of penalty was passed on 1.11.91. The petitioner, thereafter took no steps either to join duty or to challenge the order of removal. It was only in 1996 when the petitioner filed O.A. No.776/96 that he urged before the Tribunal that he was not being allowed to join duty. Thus from 1991 till 1996, the petitioner made no sincere efforts to rejoin duty even if he was unaware of the order of removal having been passed against him. This is an additional ground on which the petitioner cannot claim any relief. If the petitioner was serious about discharging his duty, he would have taken appropriate steps long before he approached the Tribunal in the year 1996.

7. We also find that the petitioner failed to demonstrate any breach of principles of natural justice or breach of statutory mandatory provisions in conduct of the inquiry which would vitiate the inquiry itself. Additionally, we find that the delinquency levelled against the petitioner and the charges proved are extremely serious. The petitioner was found to be a habitual absentee and for similar charge of unauthorized absence in past, he was once dismissed from service and only on humanitarian ground the appellate Authority decided to give fresh appointment to the petitioner. His conduct subsequent to passing of the impugned penal order also would suggest that he was not serious about discharging his duties.

8. In the result, we find no case for interference in exercise of powers under Article 227 of the Constitution of India against the decision of the Tribunal. We are in agreement with the view expressed by the Tribunal. The petition is therefore devoid of merits and is hereby dismissed. Rule is discharged with no order as to costs.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)